

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2001-000043

04/16/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

GARY L SHUPE

v.

TIMOTHY VINCENT EVANS

MICHAEL J DEW

PHX CITY MUNICIPAL COURT
REMAND DESK-LCA-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #5819932

Charge: 1. DUI
2. DRIVING WITH AC OF .10 OR HIGHER
3. SUSPENDED LICENSE (FR)

DOB: 10/22/68

DOC: 11/11/99

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case was originally assigned to this division on December 19, 2002. This Court discovered upon reviewing the case, that both parties were in agreement that the trial court failed to adequately review with Appellant, Timothy Vincent Evans, all of the rights that he would be giving up when he agreed to waive his right to trial by jury and to submit the case for determination by the trial judge upon a stipulated record. Specifically, the trial judge failed to inform Evans of the nature and range of sentence of the crime of which he was accused and

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could be found guilty. Additionally, both parties agree that the trial judge accepted Evans' admission to a prior conviction, and failed to inform Evans of the full consequences of his admission, including those rights given up by Evans concerning his rights to a trial on the prior conviction, and the consequences of the effect of a prior conviction to enhance a sentence. This Court ordered inclusion within its file, and record on appeal, the Rule 32 matters that had occurred in this case. Upon review of the Rule 32 proceedings, it does not appear they affect, in any way, the issues presented on appeal.

This Court has considered the record of the proceedings from the Phoenix City Court, the Memoranda submitted by counsel, and the supplemental memoranda submitted by counsel in this case.

The record in this case indicates Appellant, Timothy Vincent Evans, appeared in court on January 17, 2001, and waived his right to a jury trial and submitted his case to the court on the basis of stipulated evidence. Such a submission to the trial court was tantamount to a guilty plea and requires that the trial judge advise Appellant of the consequences of such a plea, those rights that he gave up by making the submission, and that the submission was knowingly, voluntarily and intelligently made. Due process requires that guilty pleas be made voluntarily (with sufficient awareness of the relevant circumstances and likely consequences.)¹ The Arizona Rules of Criminal Procedure also require that guilty pleas or submissions be accepted "only if voluntarily and intelligently made."² Arizona law requires that a Defendant be advised of those constitutional rights which the Defendant foregoes³ and the nature and range of possible sentences, including special conditions regarding that sentence.⁴

Where a criminal Defendant has received the full benefit of a plea bargain, the court should not allow that Defendant to vacate the agreement.⁵ Specifically, a Defendant should not be allowed to back out of a plea bargain unless the information that was not provided to him during the change of plea process was actually relevant to his decision making process.⁶ And, "where the missing information does not go to Defendant's essential objective in making the agreement, where it involves secondary or minor terms collateral to the decision to plead, and where it is not 'of the essence' of the agreement, it is in the public interest that the agreement be enforced."⁷

The proper remedy to determine if the trial judge's failure to specifically inform Appellant of the information noted previously within this opinion was relevant and material to

¹ Brady v. United States, 397 U.S. 742, 748, 90 S.Ct. 1463, 1469, 25 L.Ed.2d 747 (1970).

² Rule 17.1(b), Arizona Rules of Criminal Procedure.

³ Rule 17.2(c).

⁴ Rule 17.2(b).

⁵ State v. Crowder, 155 Ariz. 477, 481, 747 P.2d 1176, 1180 (1987); State v. Nunez, 109 Ariz. 408, 510 P.2d 380 (1973).

⁶ Id.; United States v. Runck, 817 F.2d 470 (Eighth Circuit 1987).

⁷ State v. Crowder, 155 Ariz. at 481, 747 P.2d at 1180.

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the making of the admission, and rendered such admission not voluntary or not intelligently made, is to remand this case back to the trial court for an evidentiary hearing on Appellant's awareness or ignorance of the matters on which the court failed to inform him.⁸ At that evidentiary hearing, the trial court should apply the legal principles cited in this opinion to determine whether the "extended record" shows Defendant had knowledge of the nature and range of the sentence of the crime of which he was accused and could be found guilty, and the constitutional rights he gave up by admitting his prior conviction, and the consequences of his admission to a prior felony conviction, including the sentencing enhancements. If Appellant was not aware of this information, then the trial court must then determine whether such lack of knowledge was relevant and material to Appellant's decision to make the admission, and any plea bargain or agreement made with the State. If the trial court finds from all the evidence that this necessary information was unknown to Appellant, and was a relevant and material factor in Appellant's decision to submit the case to the court and admit his prior conviction, then the trial court should vacate the submission, its judgments of guilt and sentences imposed.⁹

IT IS THEREFORE ORDERED remanding this case back to the Phoenix City Court for an evidentiary hearing consistent with this opinion.

IT IS FURTHER ORDERED that the Phoenix City Court shall notify this Court by endorsement on its minute entry order, which shall constitute a final appealable decision in this case.

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

⁸ State v. Crower, supra; State v. Medrano-Barraza, 1990 Ariz. 472, 949 P.2d 561 (App.1997).

⁹ Id.